

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Robert Pollak

Date application filed with the Town Clerk: January 3, 2006

Nature of request: To renew Special Permit ZBA FY97-53 to operate a pizza restaurant under new ownership and management, under Section 3.352.1, Class II restaurant

Address: 17B Montague Road (Map 5A, Parcel 78, B-VC Zoning District)

Legal notice: Published on January 11th and 18th, 2006 in the Daily Hampshire Gazette and sent to abutters on January 5, 2006.

Board members: Tom Simpson, Ted Rising and Jane Ashby

Submissions: The petitioner submitted a Management Plan for a pizza restaurant called "Pizza Shark", a floor plan and parking plan of existing conditions, and a drawing of the proposed sign for above the restaurant entranceway.

Site Visit: January 24, 2006

The Board met with the applicant and Barbara Metcalf, interior designer, at the site and observed the following:

- The small shopping plaza in which the restaurant is located.
- The Village Center surrounding area, which includes a post office, bank, auto repair shop, library, hair salon, and other businesses.
- The current seating of thirty-two, consisting of 8 tables with 4 seats each
- The kitchen, which is equipped for Indian cooking as well as a pizza oven.

Public Hearing: January 26, 2006

Bob Pollak spoke to the application at the hearing. He stated the following:

- The petitioner established a company called "Wild Iris" to operate a restaurant in North Amherst at the site of the former "Daisy's". The first step for Wild Iris was to open a pizza take-out business from that location.
- In November, 2005 Pollak's pizza oven split, and he contacted Superior Pizza for the use of their oven, which is located about a half-mile to the north in the Riverside Mall on Montague Road.
- Pollak learned at that time that the owner of Superior Pizza, Jaswant Singh, wanted to sell his business. He has been negotiating to buy that business since.
- Plans for renovation are minimal beyond cosmetic changes to the décor, lighting, signage, carpet replacement, etc.
- The number of seats available will remain the same at 32, although the petitioner may substitute a counter with stools for two of the tables, 8 seats total.

- Indian food will not be offered as it was by the former owner; the petitioner may add another oven to increase the capacity for pizza.
- The mobile food vans that Pollak currently uses will be used to deliver pizza to customers. The vans can prepare the food as well, which will improve the speed of delivery and result in a fresher product.
- Pollak has been granted a vender license from the Select Board to operate around town from 8 AM to 8 PM.
- The current Superior Pizza closes at 2 AM, but can deliver pizza until 3 AM, as do other pizza places in town, such as Bruno's. The petitioner would like the same hours of operation.
- There will be no alcohol served or provisions for outdoor dining.
- The ingredients will be organic, locally grown and the highest quality that the petitioner can find.

Mr. Rising asked if the mobile cooking vans are at the restaurant after 2 AM. Mr. Pollak replied that the restaurant would close by 2 AM, but the vans would come back to the restaurant later in order to empty the food from the vans and put it in the coolers. The vans would then go back to Mr. Pollak's other restaurant at 1185 North Pleasant Street (the former Daisy's).

Mr. Rising commented that since the pizza restaurant is in a residential area, could the vans return earlier to unload. The petitioner said that he could try, but it may be difficult at times.

The Board then discussed the layout of the shopping plaza in relation to the apartment complex located behind the plaza. They concluded that the apartments were located a fair distance away, and that the apartment garages shielded the homes from the business space in terms of noise and lights. The return of the vans in the early morning hours shouldn't unduly disturb the residents.

Mr. Simpson asked if the kitchen layout would change in any significant way, other than adding another pizza oven. The petitioner said that it would not change. Mr. Simpson noted that the change of ownership needs Board of Health review as well as Board of Appeals review. The petitioner stated that he is dealing with the Health Department for the change.

Mr. Simpson asked if the Building Commissioner had determined the seating capacity for the restaurant. The petitioner stated that the capacity had been set for 32 seats.

Mr. Simpson stated that the Board needs more information for the proposed sign above the doorway. The petitioner had submitted a sketch and dimensions of the proposed sign, but color, lighting, materials and location will also be needed for sign approval. Section 8.20 of the Bylaw stipulates that signs affixed to a business building shall not exceed 10 % of the area of that wall.

Building Commissioner Bonnie Weeks said that as long as the petitioner sticks to the same dimensions and location as the existing sign, then the 10% limit may be relaxed a bit. The petitioner stated that he will affix a new sign of the same materials over the location of the existing sign, the same dimensions. The colors will be background blue and black, with yellow lettering.

Mr. Rising moved to close the evidentiary portion of the hearing. Ms. Ashby seconded the motion, and the vote was unanimous to close the hearing.

Public Meeting:

The Board noted that a pizza place had operated at this location under Special Permit since 1982, and that the location continued to be suitable and appropriate. Although located in the North Amherst Village Center, the existence of the delivery vans will help make the pizza available to a wider set of customers.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.38, 10.381, 10.382 & 10.383 – The proposal is suitably located in the neighborhood in which it is proposed, since the shopping plaza is in a B-VC zoning district, designed for a mix of businesses. A pizza restaurant has existed at this location for over 20 years and has not constituted a nuisance to abutters, vehicles or pedestrians. The current management will not alter the operation of the restaurant at all, except for the delivery vans which will be stored elsewhere.

10.384, 10.386 & 10.387 – Adequate facilities are provided for the proper operation. The restaurant exists in a shopping plaza where adequate parking, lighting, snow removal, etc. are provided. There are two means of egress for the plaza. The sign for the business will be the same size as the previous sign, and will be approved by the Board prior to the business opening.

10.388 – The proposal provides adequate space for off-street loading and unloading of goods, since the back of the building is paved for deliveries. Customers park in the front, separate from deliveries.

10.389 – The proposal provides adequate methods of disposal, since the plaza provides containers for waste/recycling. A condition of this permit addresses the safe disposal of cooking oil/grease.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it provides a popular product that can be conveniently delivered to the residents of Amherst.

Zoning Board Decision:

Ms. Ashby moved to APPROVE the application, with conditions. Mr. Rising seconded the motion.

For all of the reasons stated above, the Board VOTED to GRANT a Special Permit to renew Special Permit ZBA FY97-53 to operate a pizza restaurant under new ownership and management, under Section 3.352.1, Class II restaurant, on the premises at 17B Montague Road (Map 5A, Parcel 78, B-VC Zoning District) as requested in the application filed by Robert Pollak, with conditions.

TOM SIMPSON

TED RISING

JANE ASHBY

FILED THIS _____ day of _____, 2006 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2006.
NOTICE OF DECISION mailed this _____ day of _____, 2006
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2006,
in the Hampshire County Registry of Deeds.

**Town of Amherst
Zoning Board of Appeals**

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to renew Special Permit ZBA FY97-53 to operate a pizza restaurant under new ownership and management, under Section 3.352.1, Class II restaurant, on the premises at 17B Montague Road (Map 5A, Parcel 78, B-VC Zoning District) as requested in the application filed by Robert Pollak, subject to the following conditions:

1. Seating shall be limited to a total of 32 seats, including tables and/or stools.
2. No alcoholic beverages shall be served or consumed on the premises.
3. No more than four persons shall be employed on the premises at any one time.
4. The hours of operation for the restaurant shall be 11:30 AM to 2 AM, 7 days a week.
5. Deliveries shall be made to the back of the restaurant between 9 AM and 5 PM, utilizing the back parking lot
6. Pizza vans shall be stored overnight at 1185 North Pleasant Street.
7. The sign shall be submitted to the Board for approval at a public meeting prior to issuance of the certificate of occupancy from Inspection Services.
8. The restaurant shall be managed according to the Management Plan approved by the Board on January 26, 2006, and on file in the office of the Board of Appeals
9. Environmentally safe storage and disposal of cooking oil/grease shall be maintained. A plan for safe disposal of the cooking oil shall be submitted to the Board for approval at a public meeting.

TOM SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE